

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen,	)	CIVIL NO. CV03-00385 SOM-LEK
	)	(Copyright)
Plaintiff,	)	
	)	AFFIDAVIT OF LYLE S. HOSODA
v.	)	
	)	
HAWAIIAN EXPRESS SERVICE,	)	
INC., et al.	)	
	)	
Defendants.	)	
_____	)	

**AFFIDAVIT OF LYLE S. HOSODA**

STATE OF HAWAII	)
	) SS.
CITY AND COUNTY OF HONOLULU	)

LYLE S. HOSODA, being first duly sworn under oath  
deposes and says as follows:

1. I am the principal attorney of the law firm of  
LYLE S. HOSODA & ASSOCIATES, L.L.C., attorneys for Defendants  
Brian Christensen, Mark Dillon, Teresa Noa, Melvin Ponce, Sonia  
Purdy, Justin Fukumoto, Alfreda Waiolama, and Jacqueline Rio  
("Employees") and am duly authorized to make this affidavit.

2. Attached hereto as Exhibit "A" is a true and  
correct copy of the Order Granting Defendant Foodland's Motion  
for Summary Judgment; Granting Defendant Hawaii Transfer  
Company's Motion for Summary Judgment; and Granting in Part,  
Denying in Part Defendants Dillon, Noa, and Christensen's Motion  
for Summary Judgment, filed herein on January 26, 2005.

3. Attached hereto as Exhibit "B" is a true and correct copy of the Order Denying Berry's Motion for Summary Judgment against AlixPartners; Order Granting AlixPartners' Countermotion for Summary Judgment, filed herein on June 17, 2005.

4. Attached hereto as Exhibit "C" is a true and correct copy of Order Granting in Part, Denying in Part Berry's Motion for Summary Judgment; Order Granting C&S Logistics of Hawaii, LLC, C&S Wholesale Grocers, Inc., C&S Acquisition, LLC, ES3, LLC, and Richard Cohen's Motion for Summary Judgment; Order Granting Guidance Software, Inc. and Michael Gurzi's Motion for Summary Judgment; Order Granting in Part, Denying in Part Remaining Defendants' Motions for Summary Judgment, filed herein on June 27, 2005.

5. Attached hereto as Exhibit "D" is a true and correct copy of the Order Denying Plaintiff Wayne Berry's Motion for Preliminary Injunction, filed herein on October 8, 2004.

6. Attached hereto as Exhibit "E" is a true and correct copy of the Order Denying Defendants' Motions for Summary Judgment; Order Affirming Magistrate Judge's Adoption of Discovery Master's Order Regarding F-1 Program Materials, filed herein on October 21, 2005.

7. Attached hereto as Exhibit "F" is a true and correct copy of the March 21, 2005 Expert Report prepared by Thomas Ueno.

8. Attached hereto as Exhibit "G" is a true and correct copy of the Special Verdict Form, filed herein on March 7, 2006.

9. Attached hereto as Exhibit "H" is a true and correct copy of the Order Denying Plaintiff's Motion for Issuance of Permanent Injunction and for Order Directing Return, Destruction or Other Reasonable Disposition of All Copies of Freight Control System, filed herein on March 9, 2006.

10. Attached hereto as Exhibit "I" is a true and correct copy of the Subpoena in a Civil Case, issued herein on June 18, 2004, to Iowa Telecommunications, Inc.

11. Attached hereto as Exhibit "J" is a true and correct copy of the Order, entered herein by Magistrate Kobayashi on July 7, 2004.

12. Attached hereto as Exhibit "K" is a true and correct copy of the Discovery Order re Defendant's Request for Protective Order, entered herein by Magistrate Kobayashi on October 26, 2004.

13. Attached hereto as Exhibit "L" is a true and correct copy of the Order Regarding Documents of Iowa Telecom

Produced to the Discovery Master for His In Camera Review, filed herein on April 13, 2005.

14. Attached hereto as Exhibit "M" is a true and correct copy of the Order Denying Plaintiff's Motion for Reconsideration, filed herein on February 27, 2006.

15. The Employees seek attorneys' fees paid to Lyle S. Hosoda and Associates, LLC, in the reasonable amount of \$386,087.50, non-taxable expenses in the amount of \$13,333.38, and costs in the amount of \$21,577.40, for a total amount of \$420,997.83.

16. I have reviewed and approved the time and charges set forth in the itemization of work performed, and based on my knowledge and experience, the time spent and non-taxable expenses and costs incurred were reasonable and necessary under the circumstances. Further, I have charged reasonable hourly rates that are consistent with the fees customarily charged in this judicial district for similar legal services.

17. My legal practice consists primarily in litigation. I am the principal member of Lyle S. Hosoda & Associates, LLC and have been practicing in Hawaii for 20 years. My usual customary fee is presently \$250.00 per hour, but I have been billing the clients herein at \$200 per hour and did not change the hourly rate since 2003 when I was first retained. I expended in excess of 1162 hours in defending claims brought

against the Employees by Plaintiff from October 9, 2003 to the date of this Motion as evidenced in the individual breakdown provided herein.

18. Raina P.B. Mead's legal practice focuses on litigation. She is a 6-year associate, and her usual and customary fee is presently \$200.00 per hour. Her time was billed and collected in this case at \$125.00 per hour when we were first retained. She expended in excess of 1229.5 hours in defending claims brought against the Employees by Plaintiff from October 9, 2003 to the date of this Motion as evidenced in the individual breakdown provided herein.

19. Attached hereto as Exhibit "N" is a true and correct copy of Lyle S. Hosoda & Associates, LLC's invoices from October 9, 2003 to the present which set forth the attorneys' fees, non-taxable expenses and costs reasonably and necessarily incurred.

20. The estimated number of hours incurred by Lyle S. Hosoda & Associates, LLC, as well as a description of the work performed and services rendered are categorized as follows (with the specific breakdowns in approximate amounts that reasonably reflect the actual work performed):

	Category	LH (Hours/Fees)	RM (Hours/Fees)	Total Fees
A	Case Development	271/54,200.00	234/29,250.00	83,450.00
B	Pleadings	38/7,600.00	32/4,000.00	11,600.00

C	Written Discovery	207/41,400.00	304/38,000.00	79,400.00
D	Depositions	109/21,800.00	n/a	21,800.00
E	Motions	277.5/55,500.00	442/55,250.00	110,750.00
F	Court Hearings	72.5/14,500.00	30.5/3,812.50	18,312.50
G	Trial	173/34,600.00	173/21,625.00	56,225.00
H	Post Trial	14/2,800.00	14/1,750.00	4,550.00
	<b>Total Hours</b>	<b>1162/232,400.00</b>	<b>1229.5/153,687.50</b>	<b>360,087.50</b>

21. Attached hereto as Exhibit "O" is a true and correct copy of a summary of the hours and attorneys' fees incurred for the legal services performed by Lyle S. Hosoda & Associates, LLC.

22. Attached hereto as Exhibit "P" is a true and correct copy of an individual breakdown of the attorneys' fees incurred by the categories set forth in L.R. 54.3

23. The Employees also seek non-taxable expenses and costs reasonably and necessarily incurred in the defense of the claims asserted against the Employees by Plaintiff in the amount of \$34,910.78. The following is a break down of the non-taxable expenses and costs requested:

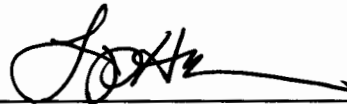
	<b>Category</b>	<b>Amount</b>
I	Mediation Fees (non-taxable expense)	1,678.03
J	Travel Expenses (non-taxable expense)	11,655.35
1	Fees of the Clerk	50.00
2	Depositions and Court Reporters	9,097.22

3a	Photocopying (in house)	6,162.85
3b	Photocopying (outside)	2,670.46
4	Special Master's Fees	3,596.87
	<b>Total</b>	<b>34,910.78</b>

24. Attached hereto as Exhibit "Q" is a true and correct copy of a summary of the non-taxable expenses and costs reasonably and necessarily incurred by Lyle S. Hosoda & Associates, LLC.

25. Attached hereto as Exhibit "R" is a true and correct copy of an individual breakdown of the non-taxable expenses and costs reasonably and necessarily incurred by Lyle S. Hosoda & Associates, LLC.

FURTHER AFFIANT SAYETH NAUGHT.



LYLE S. HOSODA

Subscribed and sworn to before me this  
23rd day of MARCH 2006.



Notary Public, State of Hawaii  
 My Commission Expires: 4-9-2008  
 Print Name: RICHARD W. HOSODA

LS